



September 11, 2000

Mr. Jeffrey A. Davis  
McGinnis, Lochridge & Kilgore, L.L.P.  
1221 McKinney Street  
Houston, Texas 77010

OR2000-3483

Dear Mr. Davis:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 138943.

The Spring Branch Independent School District (the "district"), which you represent, received a written request for four categories of information. Specifically, the requestor seeks the following:

1. All documents that describe the "job duties, responsibilities, and job description of" the district's superintendent.
2. All district policies regarding the release of information by district employees to the media.
3. All records from the past ten years regarding requests by district employees or their representatives regarding the substance of employment references pertaining to that employee.
4. All documents pertaining to the district's decision to file an ethics complaint against a named district employee.

You have submitted documents responsive to each of the above requests as Exhibits C, D, E, and F, respectively. You contend that these documents are excepted from disclosure pursuant to, *inter alia*, section 552.103 of the Government Code.

To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the

governmental body is a party. Open Records Decision No. 588 (1991). Additionally, the governmental body must demonstrate that the litigation was pending or reasonably anticipated as of the day it received the records request. Gov't Code § 552.103(c).

To establish that litigation is reasonably anticipated, a governmental body must provide this office "concrete evidence showing that the claim that litigation may ensue is more than mere conjecture." Open Records Decision No. 452 at 4 (1986). Concrete evidence to support a claim that litigation is reasonably anticipated may include, for example, the governmental body's receipt of a letter containing a specific threat to sue the governmental body from an attorney for a potential opposing party.<sup>1</sup> Open Records Decision No. 555 (1990); *see* Open Records Decision No. 518 at 5 (1989) (litigation must be "realistically contemplated"). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 at 4 (1986)

After reviewing the totality of the circumstances giving rise to the current records request, we conclude that you have demonstrated that litigation against the district was reasonably anticipated as of the date the district received the records request. We further conclude that you have demonstrated that the requested information "relates" to the anticipated litigation for purposes of section 552.103. The district therefore may withhold much of the information at issue pursuant to section 552.103 of the Government Code.<sup>2</sup>

We note, however, that some of the information at issue is specifically made public under section 552.022(a) of the Government Code.<sup>3</sup> Section 552.022(a) provides in pertinent part:

Without limiting the amount or kind of information that is public information under this chapter, *the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:*

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<sup>1</sup>In addition, this office has concluded that litigation was reasonably anticipated when the potential opposing party took the following objective steps toward litigation: filed a complaint with the Equal Employment Opportunity Commission, *see* Open Records Decision No. 336 (1982); hired an attorney who made a demand for disputed payments and threatened to sue if the payments were not made promptly, *see* Open Records Decision No. 346 (1982); and threatened to sue on several occasions and hired an attorney, *see* Open Records Decision No. 288 (1981).

<sup>2</sup>We note that the applicability of section 552.103 ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). Because we resolve your request under section 552.103, we need not address your other arguments for non-disclosure except to note that some of the information at issue may be made confidential by other law and therefore may not be released to the public even in the absence of litigation.

<sup>3</sup>You cite *Cornyn v. City of Garland*, 994 S.W.2d 258 (Tex. App.--Austin 1999, no pet.) for the proposition that the "litigation exception even applies to information that falls into the categories of public information under § 552.022." Please note that section 552.022(a) has been substantially amended since the *Garland* decision.

....

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body;

....

(10) a substantive rule of general applicability adopted or issued by an agency as authorized by law, and a statement of general policy or interpretation of general applicability formulated and adopted by an agency;

....

(14) administrative staff manuals and instructions to staff that affect a member of the public;

(15) information regarded as open to the public under an agency's policies;

....

(18) a settlement agreement to which a governmental body is a party.

Gov't Code § 552.022(a)(3), (10), (14), (15), (18) (emphasis added).

Because the categories of information listed above may not be withheld from the public pursuant to section 552.103, we conclude that the district must release the following documents in accordance with section 552.022(a): superintendent employment contracts, superintendent job descriptions that would typically be posted for public viewing, district policies governing media relations (including policies regarding meetings held under the Texas Open Meetings Act, Gov't Code ch. 551), and all settlement agreements involving the district (including any attachments thereto). The district may withhold all of the remaining requested records pursuant to section 552.103 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing

suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

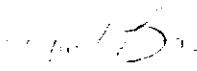
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

  
Michael J. Burns  
Assistant Attorney General  
Open Records Division

MJB/RWP/ljp

Ref: ID# 138943

Encl. Submitted documents

cc: Mr. Kevin P. Riley  
Hudgins, Hudgins & Warrick  
24 Greenway Plaza, Suite 1707  
Houston, Texas 77046  
(w/o enclosures)